

Strip searches in youth detention

A follow-up report under section 27 of the *Ombudsman Act 1974*

12 May 2022

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12 May 2022

The Hon Matthew Mason-Cox MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Jonathan O’Dea MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 27 of the *Ombudsman Act 1974*, I am providing you with a report titled *Strip searches in youth detention: a follow-up report under section 27 of the Ombudsman Act 1974*.

I draw your attention to the provisions of section 31AA of the *Ombudsman Act 1974* in relation to the tabling of this report and request that you make the report public forthwith.

A copy of this report has also been provided to the Minister for Families and Communities and the Minister for Corrections. In accordance with section 27 of the *Ombudsman Act 1974*, the responsible minister must make a statement to the House of Parliament in which the minister sits in response to the report not more than 12 sitting days from today’s date.

Yours sincerely



Paul Miller
NSW Ombudsman

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Introduction

This is a report to Parliament under s 27 of the *Ombudsman Act 1974*, which states:

Section 27 of the Ombudsman Act - Default in consequent action

- 1) Where the Ombudsman is not satisfied that sufficient steps have been taken in due time in consequence of a report under section 26, the Ombudsman may make a report to the Presiding Officer of each House of Parliament and must also provide the responsible Minister with a copy of the report.
- 2) The responsible Minister must make a statement to the House of Parliament in which the Minister sits in response to the report not more than 12 sitting days after the report is made to the Presiding Officer.

In 2020 and 2021, following a referral from the Inspector of Custodial Services and on my own motion, I undertook an investigation into the conduct of Corrective Services NSW (**CSNSW**) and Youth Justice NSW (**YJNSW**) regarding strip searches conducted on 3 young people after an incident at Frank Baxter Youth Justice Centre in November 2019. My report of that investigation¹ (the **investigation report**) was provided to the then Minister for Counter Terrorism and Corrections, the Hon. Anthony Roberts MP, and the then Minister for Families, Communities and Disability Services, the Hon. Gareth Ward MP, on 30 April 2021.

A copy of the findings and recommendations I made in my investigation report is set out in **annexures A and B** respectively.

I am not satisfied that sufficient steps have been taken in due time to implement the recommendations. Accordingly, I now make this report to Parliament under s 27 of the Ombudsman Act.

Background

This report should be read together with the special report I published² on 8 June 2021 titled [*Strip searches conducted after an incident at Frank Baxter Youth Justice Centre*](#) (the **special report**).

Section 31 of the Ombudsman Act authorises me to make a special report to Parliament on any matter arising in connection with the discharge of the Ombudsman's functions. I made the special report because I formed the view that it was in the public interest for there to be transparency regarding my investigation, its findings and the recommendations to improve systems and safeguards when young people in detention are strip searched.

I used pseudonyms in the special report for the 3 young people involved, and the relevant officers of CSNSW and YJNSW.³ I also omitted some detail and repetition. Otherwise, the special report sets out substantially the same information as the investigation report.

1 Under s 26 of the Ombudsman Act.

2 Under s 31 of the Ombudsman Act.

3 No adverse findings were made in the Investigations Report about the CSNSW officers who undertook the strip searches, or of any other individual officer of either CSNSW or YJNSW.

Key issues

Rather than repeating the contents of the special report in detail, this section provides a brief outline of the key points that are relevant to the recommendations I made:

1. Searching a person's body in any context should only be done where lawfully authorised and justified by the circumstances. Searches that require the removal of some – and especially all – of a person's clothing require particularly strong justification, as strip searches involve a violation of a person's privacy and dignity, can be confronting and are 'inherently demeaning'.⁴
2. Point 1 is particularly vital in the case of children and young people, given their particular vulnerability. Strip searches of adolescents are intrusive, can be humiliating, degrading and distressing, and have the potential to cause trauma, anxiety, fear, shame and guilt.⁵
3. The traumatic impact of a strip search can be exacerbated by the searched individual's history and life experience. Particularly for young people who have experienced physical or sexual abuse, body searches can be 'highly traumatising or threatening'.⁶ Over two thirds of young people in custody report experiencing at least one form of childhood abuse or neglect, nearly half report a traumatic event, and over a quarter report severe abuse or neglect.⁷
4. In environments other than custody (that is, outside youth justice centres), children and young people may be strip searched by NSW Police. Police practices around strip searching of young people have also attracted controversy.⁸ However, unlike strip searches in youth justice centres, police strip searches are subject to certain legislative requirements set out the *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)*. The requirements include that a search must not involve the removal of more clothes, or involve more visual inspection, than the officer conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.⁹
5. The Royal Commission into Institutional Responses to Child Sexual Abuse recommended stronger safeguards to protect children and young people from the traumatic impact of searches. This resulted in changes being made to when and how YJNSW officers may undertake strip searches of children and young people in their custody. Those changes – which are reflected only in a regulation and related YJNSW policy and procedures, rather than being entrenched in an Act of Parliament¹⁰ – include that:
 - a. strip searches can now only take the form of a 'partially clothed body' search (this means all of the young person's clothing, including underwear, will be removed during the search, but in a sequential manner – top half then bottom half – so that the young person is not fully naked at any time during the search, and a search of body cavities (other than the mouth) is not permitted)

4 *Minogue v Thompson* (2021) 56 VSC, 139 (cited in special report at p. 36).

5 Western Australia Inspector of Custodial Services, *Report of an announced inspection of Banksia Hill Juvenile Detention Centre* (April 2015) 50; Law Enforcement Conduct Commission, *Report on the monitoring of NSW Police Force misconduct matter investigation – Strike Force Blackford* (July 2020) 16; Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices* (December 2020) 103 (cited in special report at p. 36).

6 Youth Justice New South Wales, *Searching Young People Policy*, February 2019, 5 (cited in special report at p. 45).

7 Justice Health & Forensic Mental Health Network and Juvenile Justice New South Wales, *2015 Young People in Custody Health Survey: Full Report* (November 2017), xxii (cited in special report at p. 37).

8 See e.g., Law Enforcement Conduct Commission, *Inquiry into NSW Police Force strip search practices* (December 2020); Dr Michael Grewcock and Dr Vicki Sentas, *Rethinking Strip Searches by NSW Police* (August 2019).

9 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 33(5) and (6).

10 Unlike the *Law Enforcement (Powers and Responsibilities) Act 2002*, which applies to NSW Police.

- b. 'routine' strip searches are limited to new admissions and to those returning from day or overnight leave that was not supervised by YJNSW staff
 - c. strip searches are only to be conducted following a risk assessment, and with the approval of the Unit Manager or Centre Manager.
6. The legal authority to conduct strip searches of adult inmates in correctional facilities is more extensive and less prescriptive. (Again, strip searching practices in adult correctional facilities have not been without controversy.)¹¹
7. Until late 2019, if YJNSW needed external support to quell disturbances or riots at a youth justice centre they would seek the assistance of NSW Police. The actions of police attending a youth justice centre for such purposes would be subject to LEPRA and other legislation, regulations and policies that govern the powers of police generally (see point 4 above).
8. However, following a July 2019 incident (which also occurred at Frank Baxter Youth Justice centre), the head of YJNSW and the Commissioner of Corrective Services entered into a memorandum of understanding (**MoU**) to permit YJNSW to instead call in specialist CSNSW officers to respond to a riot or disturbance.
9. The MoU was authorised under s 26 of the *Children (Detention Centres) Act 1999*. That section was enacted over a decade earlier, following an incident at Acmena Youth Justice Centre in 2006. It appears the primary reason for introducing that legislation was a concern that NSW Police did not consider it a productive use of police time to respond to incidents at youth justice centres, and that police resources should be freed up to undertake their main functions.¹² Although the bill for s 26 was introduced within months of the Acmena incident and passed Parliament within 2 weeks, no MoU was actually entered into with CSNSW until many years later when the July 2019 incident occurred at Frank Baxter.
10. The consequence of the MoU is that, if CSNSW is called in by YJNSW to deal with a disturbance, CSNSW gains control and management of the relevant youth justice centre. It also means that the CSNSW officers attending the centre have all the same powers as a YJNSW officer, in addition to all the usual powers they have in regard to adult inmates in a correctional centre. In effect this means that they can do anything to young people at the centre that they could do to adult prisoners in an adult correctional facility.
11. As far as we can tell, no consideration was given – in either 2006 (when legislative power was enacted to authorise an MoU), in 2019 (when the MoU was entered into) or at any other time prior to the November 2019 incident – to the consequence that the MoU would permit CSNSW officers to strip search children and young people in detention as if they were adults in a prison.
12. In November 2019, the further incident occurred at Frank Baxter Youth Justice Centre during which 3 detainees climbed onto the roof of several buildings at the centre, gaining access to building materials and tools. CSNSW officers were called in under the MoU. The 3 detainees were talked down from the roof without the use of force. They were subsequently subjected to fully naked body strip searches by the CSNSW officers.

¹¹ See for example Western Australia Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons* (March 2019); Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (November 2017); New South Wales Inspector of Custodial Services, *Inspection of Mary Wade Correction Centre* (October 2020) 20; New South Wales Inspector of Custodial Services, *Inspection of Macquarie Correctional Centre and Hunter Correctional Centre* (November 2020).

¹² See New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 May 2006, (Paul McLeay, MP) (cited in special report at p. 26).

13. In my investigation I found that although the searches of the 3 young people in this case were conducted with lawful authority under the MoU, they were oppressive because they were disproportionate to the risk posed and did not consider the potential impact of the searches on the detainees. The appropriateness of conducting less intrusive searches was not considered, and the privacy and dignity of the detainees was not sufficiently maintained.
14. I also found that it was unreasonable for YJNSW and CSNSW to have failed to make sure there were legislative and policy safeguards in place dealing with the searching of children and young people by CSNSW under the MoU.

My recommendations

My recommendations were aimed at providing clarity around the searches that may be conducted when CSNSW takes control of a youth justice centre, and in particular ensuring that CSNSW officers adhere to YJNSW strip search policies and procedures. I also recommended that additional legislation be considered to provide clear safeguards around when, why and how both YJNSW and CSNSW officers can conduct searches of children and young people that involve the removal of clothing.

In particular, I recommended expanding the current provisions so that searches:

- are not conducted routinely, but only if there is reasonable suspicion of hidden contraband or imminent risk to health and safety
- involve the least intrusive search method required to achieve that purpose
- involve the removal of no more clothing than is necessary.

In addition, I made several recommendations aimed at changing the way searches are recorded by YJNSW. I recommended provision of training for CSNSW staff who may conduct searches of young people under the MoU, to ensure they know a) how to do so in compliance with the rules around the searching of young people in detention, and b) how that differs from the searches they might otherwise conduct in adult correctional facilities.

Given the MoU results in a youth justice centre (while it is under the control of CSNSW) being ‘cloaked’ with the same functions and powers that apply in an adult correctional facility, I also recommended that a comprehensive analysis be undertaken to compare how those functions and powers differ from those that ordinarily apply in a youth justice centre – for example powers around the use of force. I recommended that, once that comparison has been completed, consideration be given to whether the MoU should be amended so that other powers applying to adult inmates in adult correctional facilities should also be disapplied or modified so they do not apply to children in youth justice centres.

The Ministers’ response to the recommendations

The then Minister for Families and Community Services, the Hon. Alister Henskens SC MP, and the then Minister for Counter Terrorism and Corrections, the Hon. Anthony Roberts MP provided a joint response to the recommendations on 17 August 2021. The recommendations I made are at **annexure B**. A copy of the Ministers’ response is attached at **annexure C**.

The response states that 5 of the 9 recommendations in the investigation report are not supported. The Ministers rejected all recommendations for legislative amendments aimed at providing statutory safeguards for the strip searching of children and young people in youth justice settings.

Since my investigation report was provided to the Ministers:

- Legislation has not been prepared, introduced or enacted to give effect to the recommendations that strip searches in youth justice centres may only ever be conducted by way of ‘partially clothed body’ searches only, and not fully naked body strip searches (see **recommendation 1**).
- Legislation has not been prepared, introduced or enacted to prescribe recommended safeguards, including that a search should be conducted using the least intrusive method and involve the removal of no more clothing than is reasonably necessary for the purpose of the search (see **recommendations 2 and 3**).

- The regulations and associated policy and procedures governing strip searches in youth justice centres have not otherwise been revised to require searches to be undertaken in a way that a) involves the least intrusive search method, b) involves the removal of no more clothing than is reasonably necessary, and c) is only on the basis of a reasonable suspicion of hidden contraband or imminent risk to health and safety. Nor have they been revised to include a requirement to inform the person being searched of the reason why a particular piece of clothing is to be removed (see **recommendation 3**).¹³
- The MOU and associated policies and procedures have recently been amended to provide some additional guidance about the respective roles and responsibilities of CSNSW and YJNSW. While this is a positive development, the changes do not reflect the recommendations I made in this regard (see **recommendation 4**). The revised MoU:
 - continues to authorise CSNSW officers to conduct fully naked body strip searches of children and young people in youth justice centres
 - provides that such searches may be conducted where required because of ‘risk’, but provides no guidance as to the circumstances that might constitute such a risk or who is to make that decision
 - contains no requirement to record the reasons for a decision to conduct a strip search, including reasons why a decision was made that a fully naked body strip search was to be conducted rather than a partially clothed body strip search
 - contains an express requirement for CSNSW officers to have ‘reasonable grounds’ before conducting a partially clothed body strip search in a youth justice centre but contains no such requirement before a fully naked body strip search is conducted.

A copy of the revised MoU is at **annexure D**.
- CSNSW and YJNSW have not prepared and published a comprehensive analysis of all other functions and powers that CSNSW has over adult inmates, and which under the MoU they may therefore apply to children and young people when CSNSW takes control and management of a youth justice centre. Nor have they prepared and published a comparison of those functions against the functions and powers of YJNSW (see **recommendations 7 and 8**).
- The report recommendations have also not been applied to the context of s 26A of the *Children (Detention Centres) Act 1987*, which relates to the conveyance of national security interest detainees (see **recommendation 9**).
- Under the recently legislated Child Safe Scheme, YJNSW is required to implement the Child Safe Standards to ensure the young people in its care are kept safe from harm. While this is a positive development, it will not address the recommendations.

¹³ As noted in the special report, the recommended legislation is in place in other jurisdictions. For example, in the Australian Capital Territory searches of young people are to be conducted in the least intrusive manner appropriate in the circumstances. In March this year, legislation with similar provisions was introduced in the Tasmanian Parliament. In Queensland and the Australian Capital Territory, officers must inform the detainee of the reason why the removal of a particular piece of clothing is necessary: see special report, at p. 38. Section 33 of the *Law Enforcement (Powers and Responsibilities) Act 2002* provides that a police strip search should involve no removal of clothing or visual inspection greater than is reasonably necessary for the search.

Annexure A – findings

I made the following findings under the Ombudsman Act:

1. It was unreasonable within the meaning of s 26(1)(b) for CSNSW and YJNSW to fail to recognise the particular vulnerability of children and young people in detention and, accordingly, make sure that there were legislative and policy safeguards in place dealing with the searching of children and young people by CSNSW officers under the MOU.
2. It was oppressive within the meaning of s 26(1)(b) for CSNSW to conduct fully naked body strip searches of the 3 detainees as the searches were disproportionate to the risk posed, did not take into account the potential impact of the searches on the detainees, did not consider the appropriateness of conducting less intrusive searches, and did not sufficiently maintain the privacy and dignity of the detainees.
3. It was wrong within the meaning of s 26(1)(g) for CSNSW to strip search the 3 detainees in view of operating CCTV cameras.

I did not make any adverse findings about the CSNSW officers who carried out the strip searches.

Annexure B – recommendations

I made the following recommendations after the investigation:

Recommendations

Legislative change

1. The responsible Minister consider legislative amendment to expressly prohibit the fully naked body strip searching of children and young people in detention, including by CSNSW officers.
2. The responsible minister consider legislative amendment to provide that searches of young people, who are in the custody or care of YJNSW, by CSNSW officers and YJNSW staff be conducted only in accordance with clause 11A of the Children (Detention Centres) Regulation 2015.
3. The responsible Minister consider amending clause 11A of the *Children (Detention Centres) Regulation 2015* to expand the current provisions to provide that:
 - a. Where a search is necessary, the search method used should be the least intrusive method required to achieve the purpose of the search.
 - b. Searching officers must inform young people of the reason for the search.
 - c. Partially clothed body strip searches should not be conducted routinely, and only when an officer forms a reasonable suspicion that:
 - i. there is contraband hidden on the body of the person, and/or
 - ii. there is an imminent risk to the health and safety of staff and/or young people.
 - d. Partially clothed body strip searches should not involve the removal of more clothing than is reasonably necessary for the purpose of the search.
 - e. Searching officers must inform young people of the reason for the removal of particular clothing.
 - f. Partially clothed body strip searches should not involve any more visual inspection than is reasonably necessary for the purpose of the search.
 - g. Partially clothed body strip searches should be conducted in private.

MOU and policy and procedural changes

4. The MOU between CSNSW and YJNSW and all associated policies and procedures be amended to provide that:
 - a. CSNSW officers must not conduct fully naked body strip searches of young people
 - b. CSNSW officers should only use the search methods outlined in clause 11A of the Children (Detention Centres) Regulation 2015.
 - c. CSNSW officers should adhere to YJNSW search policy and procedure when searching young people, including ensuring no searches are conducted in rooms monitored by CCTV.
 - d. There is a documentary record of the precise point in time at which the control of a youth justice centre is assumed by CSNSW officers, and a documentary record of the precise point in time at which CSNSW is satisfied that good order has been restored and control of the centre is passed back to YJNSW.

Training

5. CSNSW officers who may deal with young people under the MOU receive training about conducting searches in line with YJNSW's search policy and procedure.

Record keeping

6. YJNSW establish a system to capture digital records of all searches and ensure that the Ombudsman has live access to these records and related reports.

Broader considerations

7. CSNSW and YJNSW undertake and publicly release a comprehensive analysis of all relevant functions and powers that CSNSW has, and all relevant policies and procedures it may apply, for inmates in adult correctional facilities, and include a comparison of these against the corresponding functions, powers, policies and procedures that YJNSW has for young people in detention.
8. That, having regard to this comparison, the Secretary and the Commissioner determine whether any other amendments to the MOU should be made in the context of the recommendations in this report, and in particular whether any of the functions, powers, policies or procedures of for adult inmates should be disapplied or modified for young people in detention (including for the use of force).
9. CSNSW and YJNSW make sure that the recommendations in this report are also considered in the context of s 26A of the *Children (Detention Centres) Act 1987* relating to the conveyance of national security interest detainees.

Annexure C – Ministers’ response to recommendations



Communities
& Justice

Ombudsman Report – Investigation into strip searches conducted at Frank Baxter Youth Justice Centre in Nov 19

YJNSW & CSNSW Response to Recommendations

Recommendation 1 - The responsible Minister consider legislative amendment to expressly prohibit the strip searching of children and young people in detention, including by CSNSW officers.

It is agreed that the strip searching of young people should be avoided wherever possible.

Since the time of the incident subject to this investigation, YJNSW and CSNSW have worked together to update their Memorandum of Understanding, along with their respective protocols, procedures and manuals. The following operational practices have been established:

- It is the default position that following a disturbance or riot detainees are to be handed back to YJNSW staff for a partially clothed body search to be undertaken.
- CSNSW Officers may only conduct a partially clothed body search if:
 - i. There are no YJNSW staff available to carry out the search; and/or
 - ii. Where the risk posed by the detainee requires correctional officers to carry out the search
- CSNSW Officers must not conduct a strip search of the detainees involved in a riot or disturbance unless the risk posed by the detainee requires CSNSW Officers to do so.

These clearly graduated responses ensure strip searching of detainees is avoided wherever possible and is considered an appropriate action aligned with the intent of this recommendation.

Notwithstanding this, the strip searching of detainees is a necessary consideration for the youth justice system, to be used only in exceptional circumstances i.e. when detainees possess weapons and threaten staff. The removal of this safeguard in legislation may have the potential to compromise the security, safety and good order of Youth Justice centres, staff and other young people.

Having considered this recommendation alongside the operational improvements that have already been made by YJNSW and CSNSW, along with recognising the need to have legislative mechanisms that allow for escalated responses in exceptional circumstance, this recommendation is considered to be adequately addressed, noting that an explicit prohibition of strip searching in legislation will not be pursued.

Recommendation 2 - The responsible Minister consider legislative amendment to provide that searches of young people who are in the custody or care of YJNSW by CSNSW officers and YJNSW staff be conducted only in accordance with cl 11A of the Children (Detention Centres) Regulation 2015.

As above, it is agreed that the strip searching of young people should be avoided wherever possible. Since the time of the incident subject to this investigation, YJNSW and CSNSW have worked together to update their Memorandum of Understanding, along with their respective protocols, procedures and manuals. The following operational practices have been established:

- It is the default position that following a disturbance or riot detainees are to be handed back to YJNSW staff for any partially clothed searches to be undertaken
- CSNSW Officers may only conduct a partially clothed body search if:
 - i. There are no YJNSW staff available to carry out the search; and/or
 - ii. Where the risk posed by the detainee requires correctional officers to carry out the search
- CSNSW Officers must not conduct a strip search of the detainees involved in a riot or disturbance unless the risk posed by the detainee requires CSNSW Officers to do so.

This newly formulated series of escalated responses institutes the ability for CSNSW officers to undertake partially clothed body searches if required. However, as per the response to recommendation 1 above, the strip searching of detainees is a necessary safeguard for the young justice system, to be used only in exceptional circumstances. Any legislative change that would restrict the ability for this safeguard to be applied would have the potential to compromise the security, safety and good order of Youth Justice centres, staff, community and other youth justice detainees.

Having considered this recommendation alongside the operational improvements that have already been made by YJNSW and CSNSW that include the ability for CSNSW officers to undertake partially clothed body searches, along with recognising the need to have legislative mechanisms that allow for escalated responses in exceptional circumstance, this recommendation is considered to be adequately addressed, noting that a legislative amendment will not be pursued.

Recommendation 3 - The responsible Minister consider amending cl 11A of the Children (Detention Centres) Regulation 2015 to expand the current provisions to provide that:

It is noted that Clause 11A(7) currently provides that a search under Clause 11A ‘*must be conducted in accordance with any directions of the Secretary*’. Owing to the existing effect of this Clause, and given the most effective way of translating recommendations to operational practice is through amending YJNSW operational policy that acts as the direction of the Secretary under Clause 11A(7), amendments to Clause 11A *Children (Detention Centres) Regulation 2015* will not be pursued. This is applicable to recommendation 3a through to 3g. Further responses are provided against each sub-recommendation are made on the following pages.

3a. Where a search is necessary, the search method utilised should be the least intrusive method required to achieve the purpose of the search.

While it is noted that the existing YJNSW *Searching Young People Policy* provides clear instruction about the type of search utilised being identified based on an assessment of risk, this policy will be updated to explicitly direct that the least intrusive method of search is to be used to adequately mitigate the identified risk.

The actions against this recommendation are in progress.

3b. Searching officers must inform young people of the reason for the search.

The YJNSW *Searching Young People Policy* that acts as a direction of the Secretary under Clause 11A(7), states that:

“Before a search begins, the reasons for the search and also the applicable type of search process are to be clearly explained to the young person by the employee conducting the search. Checking of the young person’s understanding must occur prior to the search commencing.”

YJNSW has not been made aware of any instances where searches conducted by its staff have failed to follow this policy direction.

Given the existing policy direction and noting the existing regulatory provision that searches must be conducted in accordance with any direction of the Secretary, this recommendation is considered to be adequately addressed.

3c. Partially clothed searches should not be conducted routinely, and only when an officer forms a reasonable suspicion that:

- i. there is contraband hidden on the body of the person, and/or***
- ii. there is an imminent risk to the health and safety of staff and/or young people.***

Clause 11A(9) of the existing *Children (Detention Centres) Regulations 2015* prohibits the routine partially clothed body searching of detainees except in the case of a detainee being admitted to a detention centre or returning to a detention centre following day or overnight leave.

All NSI YJ detainees must be searched before and after any escort by CSNSW officers. If an NSI YJ detainee is in being escorted to or from court or to hospital but remains in YJ custody then a partially clothed body search will be undertaken by CSNSW officers. CSNSW has updated local operating procedures to ensure when escorting detainees in YJ custody that searching procedures align with Clause 11A of the CDC Act and the Youth Justice searching policy and procedures. CSNSW Officers must not conduct a strip search of the detainees prior to or after an escort unless the risk posed by the detainee requires CSNSW Officers to do so.

The YJNSW *Searching Young People Policy* that acts as a direction of the Secretary under Clause 11A(7), states that:

“Employees must have assessed that the young person has possession of or had an opportunity to obtain a dangerous item or contraband before deciding to conduct a clothed body or partially clothed body search.”

In addition to this direction, the Policy provides further direction on risk-based decisions to search including factors to be taken into account when assessing the risk. This risk-based decision-making process is a robust method of ensuring searches are effectively utilised to mitigate presenting risk in the least intrusive manner possible.

Given the existing Regulatory provision, along with the existing policy directions and noting the existing regulatory provision that searches must be conducted in accordance with any direction of the Secretary, this recommendation is considered to be adequately addressed.

3d. Partially clothed searches should not involve the removal of more clothing than is reasonably necessary for the purpose of the search.

Subject to Clause 11A and as directed by the *Searching Young People Policy*, YJNSW implements a partially clothed body search process that is broadly consistent across Australian Youth Justice jurisdictions; that being the removal of only one half of the bodies clothing (either top or bottom) at any one point in time.

As contraband could be concealed under garments on either the top or bottom half of a detainee’s body, conducting a partially clothed body search of only the top or bottom half of their body would fail to appropriately mitigate the risk identified that prompted the search and has the potential to compromise the security, safety and good order of Youth Justice centres, staff and other young people.

Amending regulations or policy directions that stem from the regulatory provisions to implement this recommendation is operationally unfeasible.

3e. Searching officers must inform young people of the reason for the removal of particular clothing.

See response to 3d above – as the institution of partially clothed body searches where an effective limit is placed on what clothing could be removed is operationally unfeasible, this recommendation regarding communicating reasons for the removal of specific items of clothing will have no utility.

3f. Partially clothed searches should not involve any more visual inspection than is reasonably necessary for the purpose of the search.

See response to 3d above – the institution of partially clothed body searches where an effective limit is placed on what clothing could be removed, or areas of the body be visually inspected, is operationally unfeasible.

3g. Partially clothed searches should be conducted in private.

The YJNSW *Searching Young People Policy* that acts as a direction of the Secretary under Clause 11A(7), states that:

“Partially clothed body searches must be performed in a private room, out of view of other employees or young persons. The designated or nominated search room or area must afford the young person privacy and preserve his or her dignity and be free of excess furniture and non-fixed items. If this room is normally under camera surveillance, the employee conducting the search must ensure that the cameras are turned off during the search.”

This aligns with the existing provisions under Clause 11A (6) that states:

A search under this clause must be conducted with due regard to the dignity, self-respect and well-being of the detainee and as quickly as is reasonably practicable

CSNSW Policy does not stipulate that searching under CCTV is not permitted however searches must be conducted in a place away from the public view and from those not directly involved in the search. In all cases, searches must be conducted with due regard to dignity and respect. When CSNSW officers are required to search in a YJ detention centre, CSNSW will search in locations in line with YJ policy. CSNSW have generated local operating procedures to co-incide with YJ policy and are in the process of undertaking training.

While the issues related to the strip searches subject to this investigation being captured on CCTV are acknowledged, DCJ is not aware of any partially clothed body searches conducted in a manner contrary to this policy direction or the existing regulatory safeguards.

Given the existing Regulatory provision, along with the existing policy directions and noting the existing regulatory provision that searches must be conducted in accordance with any direction of the Secretary, this recommendation is considered to be adequately addressed.

4. The MOU between CSNSW and YJNSW and all associated policies and procedures be amended to provide that:

In March 2021, YJNSW and CSNSW entered into an updated Memorandum of Understanding pursuant to section 26 of the *Children (Detention Centres) Act 1987*. This MOU institutes updated systems and processes for the use of CSNSW staff in dealing with riots and disturbances. This MOU is supported by a series of operational protocols and operating procedures that further direct the work of YJNSW and CSNSW officers.

4a. CSNSW officers must not strip search young people.

See responses to recommendations 1 and 2 above.

While a series of escalated responses is now in place that allows CSNSW to undertake partially clothed body searches and looks to avoid the strip searching of detainees wherever possible, the explicit prohibition of strip searching detainees will not be pursued.

4b. CSNSW officers should only use the search methods outlined in clause 11A of the CDC Regulation.

See responses to recommendations 1, 2 and 4a above.

While a series of escalated responses is now in place that allows CSNSW to undertake partially clothed body searches and looks to avoid the strip searching of detainees wherever possible, the explicit prohibition of strip searching detainees will not be pursued.

4c. CSNSW officers should adhere to YJNSW search policy and procedure when searching young people, including ensuring no searches are conducted in rooms monitored by CCTV.

See responses to recommendations 1, 2, 3g and 4a above.

Under the updated MOU and accompany operational protocol and local operating procedures, it is the default position that following a disturbance or riot detainees are to be handed back to YJNSW staff for any partially clothed searches to be undertaken.

However the updated MOU and Operating Protocol for transporting NSI offenders and accompanying local operating procedures also allows CSNSW officers to undertake partially clothed body searches under Clause 11A of the *Children (Detention Centres) Regulations 2015*.

On 5 March 2021, the Officer in charge from the CSNSW EHSEU attended the YJNSW Yasmar Training Facility to meet with training staff to discuss the requirements of conducting partially clothed body searches as per Clause 11A of the *Children (Detention Centres) Regulation 2015* and the YJNSW *Searching Young People Policy*. Further to this visit there is a requirement for EHSEU and SOG staff to attend Yasmar to undertake training by the YJNSW Organisational Development & Training Unit on conducting a partially clothed search. This training was scheduled to be completed on 26 June 2021 but due to the COVID restrictions the face to training was unable to go ahead. However the meeting between YJNSW and CSNSW went ahead to review operational arrangements outlined in the MOU and Operating Protocol to transport NSI offenders. Training is due to be completed by 30 August once COVID restrictions are lifted.

CSNSW have developed a local operating procedure for officers to undertake searches in line with the YJNSW Searching Young People Policy. Given the new MOU and newly developed operational protocols and procedures, this recommendation is considered adequately addressed.

4d. there is a documentary record of the precise point in time at which the control of a youth justice centre is assumed by CSNSW officers, and a documentary record of the precise point in time at which CSNSW is satisfied that good order has been restored and control of the centre is passed back to YJNSW.

YJNSW has updated its Emergency Procedure Manuals at each Youth Justice Centre, including an updated process for establishing a Command Post for protracted incidents. This process includes the allocation of a Scribe to maintain a log of all actions and decisions during the incident. This log will include any decisions taken under s26A of the *Children (Detention Centres) Act 1987* with regard to the MOU between YJNSW and CSNSW.

Given this new process has been implemented, this recommendation is considered to be adequately addressed.

4e. the roles and responsibilities of CSNSW officers and YJNSW staff when the MOU is activated are clearly articulated.

YJNSW and CSNSW have worked together to establish clear roles and responsibilities when the MOU is activated. These are documented in the revised MOU along with accompany operational protocols and procedures. YJNSW and CSNSW will also run joint scenario workshop in August 2021 that will test various scenarios including clarified roles and responsibilities for CNSNSW response to escalated incidents should the MOU be activated.

Given the new MOU and accompanying operational protocols and procedures, along with the joint scenario training that will be undertaken this recommendation is considered to be partially addressed, to be completed once the workshop has been conducted.

5. CSNSW officers who may deal with young people under the MOU receive training about conducting searches in line with YJNSW's search policy and procedure.

See response to recommendations 4c

This recommendation is now considered to be partially addressed, to be completed once training has been conducted.

6. YJNSW establish a system to capture digital records of all searches and ensure the Ombudsman has live access to these records and related reports.

YJNSW is undertaking a comprehensive review of its Client Information Management System (CIMS). This review will assess the current and future requirements of the system, including digitising any existing paper-based custodial records such as search registers.

KPMG are currently conducting workshops to inform this review which the Ombudsman's Office and other key stakeholders have been actively involved in.

It is envisaged this review will culminate in a business case being prepared and submitted to Treasury seeking further investment to renew, rebuild or replace CIMS, based on the findings of the review.

It is noted that this is a technically complex and large-scale project and as such is projected to span a number of years.

7. CSNSW and YJNSW undertake and publicly release a comprehensive analysis of all relevant functions and powers that CSNSW has, and all relevant policies and procedures it may apply, in respect of inmates in adult correctional facilities, and include a comparison of these against the corresponding functions, powers, policies and procedures that YJNSW has in respect of young people in detention.

It is noted that the differences in powers, functions and operations when responding to an incident are well understood by the respective YJNSW and CSNSW Officers involved in the development and deployment of the MOU and training to be undertaken.

Both YJNSW and CSNSW have vast and complex legislative powers and functions that are further governed by relevant policies and procedures.

YJNSW and CSNSW have worked together to establish clear roles and responsibilities when the MOU is activated. These are documented in the revised MOU along with accompany operational protocols and procedures.

Legislation and various redacted policies is already publicly available for both CSNSW and YJ. From a safety and security perspective, it is not appropriate for any other relevant policies or local operating procedures to be made publicly available. As such, the making of this comparative review public is not supported.

8. That, having regard to this comparison, the Secretary and the Commissioner determine whether any other amendments to the MOU should be made in the context of the recommendations in this report, and in particular whether any of the functions, powers, policies or procedures of CSNSW in respect of adult inmates should be disapplied or modified in respect of young people in detention (including especially in respect of the use of force).

As noted above, the differences in powers, functions and operations when responding to an incident are well understood by the respective YJNSW and CSNSW Officers involved in the development and deployment of the MOU and Operating Protocol.

Notwithstanding this, analysis has been completed of policies and procedures and amendments made to the MOU and local operating procedures.

9. CSNSW and YJNSW ensure that the recommendations in this report are also considered in the context of s 26A of the Children (Detention Centres) Act 1987 relating to the conveyance of national security interest detainees.

In addition to the recently updated MOU, in March 2021, YJNSW and CSNSW have established a Joint Operating Protocol for the transportation of National Security Interest detainees.

See response to recommendations 3c and 3g as above

In establishing this protocol, the draft recommendations of this review were considered, noting the position on the recommendations as outlined above, specifically that strip searches will not be explicitly prohibited from legislation or practice.

Annexure D – extract from the revised MoU between CSNSW and YJNSW

The relevant segment of the new MoU that was signed on 8 March 2021 now states:

10. In accordance with the EPM [the Emergency Procedure Manual for the youth justice centre]:
 - a) when correctional officers remove a detainee involved in the riot or disturbance from the incident area, they must hand over the Young Person to youth justice officers.
 - b) youth justice officers must establish a surrender area and carry out partially clothed body searches of the detainees within that area, in accordance with the Act and youth justice policies and procedures. For avoidance of doubt, correctional officers must not carry out searches of detainees, unless under the circumstances specified in clauses 11 and 12.
 - c) Youth Justice officers (and not correctional officers) process each Young Person involved in the riot or disturbance.
 - d) Correctional officers may assist in conducting searches of the incident area, for the purpose of preserving the scene and collection of evidence.
11. CSNSW correctional officers may only conduct a partially clothed search of a detainee involved in the riot or disturbance if there are reasonable grounds to do so due to the following:
 - a) there are no Youth Justice Staff available to carry out the search; and/or
 - b) where the risk posed by the detainee requires the correctional officers to carry out the search.
12. CSNSW correctional officers must not conduct a full strip search of the detainees involved in a riot or disturbance, unless the risk posed by the detainee requires the CSNSW correction officers to do so.

